IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7672 OF 2005

Shankar Yashwant Bansode
and anr. ...Petitioner
vs.
The Assistant Charity Commissioner
and Ors. ....Respondents

V.N. Tayade and U.P. Warunjikar
for the petitioners.

CORAM: S.U. KAMDAR, J.

DATE : 17th November, 2005.

P.C. :

1. The present petition is filed on the basis of the order passed by this court in First Appeal no. 1822 of 2005 and other connected matters. By and order dated 18.10.2005, Deshpande, J. directed that the Assistant Charity Commissioner shall appoint a responsible officer for conducting the election process. It was further

directed that the election to be held within six weeks from the date of the said order. It was further directed that in the mean time the IInd Additional District Judge, Pandharphur shall appoint thirteen persons who shall take charge of the trust but they will not sell any of the property of the trust till the new body elected take over the charge of the Act. The Assistant Charity Commissioner has thereafter passed an order fixing the election. The said order is dated 26.10.2005 by which the office superintendent Mr. Jade was appointed as officer to supervise the election. It is the case of the petitioner that this order is illegal for two reasons. Firstly as per the order of Deshpande, J dated 18.10.2005 the petitioners were not permitted to take over the charge of the trust property and secondly that while passing the said order the Assistant Charity Commissioner accepted the voters list as correct. It is also further contended that the petitioner were not given notice of such order being passed. However it is not in dispute that pursuant to the said order

the elections were conducted on 14.11.2005 and the election process is complete. In my opinion the order of Deshpande, J dated 18.10.2005 was only an intergum arrangement till the election is completed. Once the election is complete the persons who are duly elected are entitled to take charge of the trust properties and not the petitioners. The argument of irregularity in conducting the elections by accepting incorrect voters list and or the order passed by the Assistant Charity Commissioner without notice and consequently the election is bad in law cannot be entertained in writ jurisdiction when infact the remedy is available under the Bombay Public Trust Act for challenging the election at the time when the change report is filed before the Assistant Charity Commissioner. In that view of the matter nothing survives in the present petition. Petition accordingly fail. Petition dismissed. All contentions on merits are kept open to be determined by the Charity Commissioner in an appropriate proceedings.

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